

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

HEWLETT-PACKARD COMPANY,
and HEWLETT-PACKARD
DEVELOPMENT COMPANY, L.P.

Plaintiffs,

v.

ICL NETWORK SOLUTIONS (HK),
LTD and C2C TECHNOLOGY,
INCORPORATED,

Defendants.

Civil Action No. 05-40153 FDS

**REQUEST FOR LEAVE TO FILE SUPPLEMENTAL BRIEF; SUPPLEMENTAL
BRIEF OF PLAINTIFFS HEWLETT-PACKARD COMPANY AND HEWLETT-
PACKARD DEVELOPMENT COMPANY, L.P. RE NEW FACTUAL
DEVELOPMENTS; AFFIDAVIT OF JIN H. KIM IN SUPPORT
OF SUPPLEMENTAL BRIEF**

REQUEST FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

Plaintiffs Hewlett-Packard Company and Hewlett-Packard Development Company, L.P. (collectively, "Hewlett-Packard") respectfully request leave to file a Supplemental Brief to apprise the Court of facts concerning this case that Plaintiffs have learned since filing their Ex Parte Application For Temporary Restraining Order And Order To Show Cause and supporting papers on September 1, 2005. Hewlett-Packard believes that this Supplemental Brief will assist the Court with respect to the preliminary injunction hearing that is set for September 23, 2005.

SUPPLEMENTAL BRIEF RE NEW FACTUAL DEVELOPMENTS SINCE THE EX PARTE APPLICATION

On September 1, 2005, Hewlett-Packard applied for a TRO and order to show cause why a preliminary injunction should not be issued prohibiting Defendant ICL Network Solutions (HK), Ltd. ("ICL") from using counterfeit reproductions of Hewlett-Packard's federally registered trademarks ("HP Marks") and trafficking in counterfeit Hewlett-Packard goods. On September 2, United States District Judge Reginald C. Lindsay granted the TRO and set an order to show cause hearing for September 9, 2005 before this Court.¹ The TRO specifically provided that certain counterfeit Hewlett-Packard hard drives that were being held by Worcester County Air Freight, Inc. ("WCAF") remain with WCAF until the hearing.

Since the Order to Show Cause was entered, Hewlett-Packard has learned the following additional facts concerning the counterfeit Hewlett-Packard hard drives being held at WCAF pursuant to the TRO.

On or around June 30, 2005, C2C Technology, Inc. ("C2C"), a company based in Leominster, Massachusetts, purchased from ICL a total of 390 purportedly Hewlett-Packard hard drives (190 units of HP Part No. 286778-B22 and 200 units of HP Part No. 286776-B22). *See* Affidavit of Jin H. Kim, Exs. A & B. On or around July 15, 2005 C2C purchased from ICL

¹The hearing was continued to September 23, 2005 by stipulation of Hewlett-Packard and ICL and subsequent Court order.

another 120 hard drives that were purportedly HP Part No. 286778-B22. *Id.* Ex. C. In July, ICL shipped to C2C in Leominster, Massachusetts a total of 310 hard drives that were purportedly HP Part No. 286778-B22 and 120 hard drives that were purportedly HP Part No. 286776-B22. *Id.* Ex. D.

Hewlett-Packard has been informed by C2C that C2C has sold to third parties approximately 149 units of hard drives it purchased from ICL. *Id.* ¶6. Hewlett-Packard has been further informed by C2C that it also has sent to third parties a number of ICL hard drives as “demos.” *Id.* The remainder of the hard drives purchased by C2C from ICL in June and July 2005—over 300 units—are currently being held by WCAF pursuant to the TRO, and already have been determined by Hewlett-Packard to be counterfeit. *See* Affidavit of Margie D. Terrell In Support Of Plaintiffs’ Application for Temporary Restraining Order And Order To Show Cause, filed September 1, 2005, at ¶5-6.

As a result of these new facts that Hewlett-Packard learned after filings its Application, Hewlett-Packard has added C2C as a party to this action by filing an amended Complaint. *See* Hewlett-Packard First Amended Complaint for Injunctive Relief and Damages, filed herewith. As with ICL, which brought into this District goods bearing counterfeit Hewlett-Packard trademarks, C2C has also trafficked in counterfeit Hewlett-Packard goods, and therefore Hewlett-Packard will seek, through regular notice and motion, a hearing to have C2C bound by

any preliminary injunction that may be granted against ICL at the September 23, hearing.

Dated: September 21, 2005

Respectfully submitted,

LOUIS M. CIAVARRA (BBO#546481)
BOWDITCH & DEWEY, LLP
311 Main Street
P.O. Box 15156
Worcester, MA 01615-0156
Telephone: (508) 926-3408
Facsimile: (508) 929-3011

MARTIN R. GLICK
SIMON J. FRANKEL
JIN KIM
SHANNON SCOTT
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111
Telephone: (415) 434-1600
Facsimile: (415) 217-5910

By: 

Louis M. Ciavarra

Attorneys for Plaintiffs
HEWLETT-PACKARD COMPANY, and
HEWLETT-PACKARD DEVELOPMENT
COMPANY, L.P.